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In re Application of:
Richard C. Slater
Serial No.: 10/622,403
Filed: July 18, 2003
Attorney Docket No.: TXT05-06

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: DECISION ON PETITION
: TO WITHDRAW PREMATURE FINALITY
: OF AN OFFICE ACTION
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This is a decision in petition, filed on March 21, 2006, requesting that the finality of the Final Office Action of January 26, 2006 be withdrawn

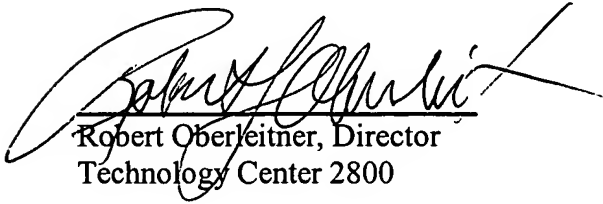
Petitioner asserts that the Office Action of January 26, 2006 contains new grounds of rejection, which are not necessitated by an amendment and, thus, it is improper for the examiner to make the action final.

A review of the application file record indicates that an amendment was filed on November 21, 2005 in response to an Office Action of August 18, 2005. The amendment introduces into the claims subject matter which was not earlier presented, new dependent claims 30 to 35 were submitted. New claims 30 to 32 depend on previously rejected claim 1 and new claims 33 to 35 depend on previously rejected claim 24. Further search was conducted with respect to new claims and an Office Action was mailed January 26, 2006. This Office Action contains new grounds of rejection based on art not previously made of record (one newly cited and applied US Patent is prior art under 35 USC 102(b)), claims 1, 24 and 30 to 35 were rejected based on newly cited US Patent, and the action is made final because the new grounds of rejection were deemed necessitated by the November 21, 2005 amendment.

Under MPEP 706.07(a), a second or subsequent actions on the merits shall be made final except where the examiner introduces a new ground of rejection not necessitated by amendment of the application by the amendment.

The argument that since claim 1 has not been amended in the November 21, 2005 amendment and because the rejection based on Seguin is a new rejection of unamended claim 1, the Office Action should not be final is not persuasive because claim 30 to 32 depend on claim 1 and claims 33 to 35 depend on claim 24. Seguin was applied under 35 USC 102(b) for claims 1, 24 and 30 to 35.

The finality of the Office Action of January 26, 2006 is proper.
The petition is DENIED.



Robert Oberleitner, Director
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